IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 502 OF 2002.

Vidya Jayaram Karekar.
Indian Inhabitant, residing
At Post Kondmala, Taluka
Chiplun, Dist.Ratnagiri.
Presently residing at Mumbai. ... Applicant.

Versus.

1. The State of Maharashtra

2. Sanjay S.Pakale,
Age: 23, R/o. Opposite
Savarde Police Line,
Taluka Chiplun, Dist.
Ratnagiri.

3. Sameer P.Sawant,
Adult, Inhabitant, residing
at Prabhat Galli, Chiplun
Bazar Peth, Chiplun,
Dist. Ratnagiri.

4. Manoj D.Burate,
Adult, Indian Inhabitant,
R/o. Gowalkot, Dewoolwadi,
Tal: Chiplun, Dist.Ratnagiri. ... Respondents.

Shri C.K.Pendse for the Applicant.

Shri U.V.Nikam, A.P.P. for the Respondent No.1.

Shri Sachin Manale for the Respondent No.2 and 4.

CORAM : ABHAY S.OKA, J.

DATED : 11th September, 2006.

ORAL JUDGMENT.:

1. On November 22, 2005 this Court issued notice for final disposal at admission stage. Accordingly on 7th September 2006, I have finally heard the Revision

Application.

2. The Revision Application is directed against the Judgment and order dated 28th June 2002 passed by the learned Additional Sessions Judge, Ratnagiri by which the Respondents No.2 to 4 were acquitted of the offence punishable under section 366 read with section 34 of the Indian Penal Code. The Applicant is the victim of the alleged offence. It must be noted here that the Respondent No.3 has expired and therefore, this Revision Application now survives only as against the Respondents Nos.2 and 4.

3. According to the case of the Applicant, on 18th August 1999 at about 9.30 p.m. while the Applicant along with her sister-in-law were proceeding on foot towards a hospital situated at Savarde for the purpose of seeking medical treatment, all of a sudden a Maruti van having blue colour passed them and halted in front of them. At that time, the 2nd Respondent opened the door of the said Maruti Van and forcibly pulled the Applicant inside the vehicle and fled away with the Applicant. The Applicant alleged that she lost her consciousness thereafter and on 19th August 1999 when she regained consciousness, she found that she was hospitalised in a hospital at Islampur. FIR was lodged by the Applicant's sister-in-law by name Mrs.Bhagyashri Vilas Karekar.

4. The reasoning given by the learned Additional Sessions Judge for acquitting the Respondents reads thus:

> "8. Complainant Bhagyashree is the only eye witness of incident. Prosecution has examined her only. She turned hostile. She has supported any of the version of prosecution against accused. The recites in the complaint are also not proved.
>
> 9. It is admitted that Vidya is now married and residing with her husband. It ay be reason for not disclosing any of the story of prosecution by complainant before the Court. The fact remains that the witness turned hostile. There is no evidence against the accused to prove the charge. So all points are answered in negative with following order."

5. The learned Advocate for the Applicant invited my attention to the Roznama of the Sessions case. He pointed out that the learned trial Judge did not bother to satisfy himself whether the witness summonses were served to all the witnesses including the Applicant, who was the victim of the incident. He submitted that for

some strange reasons the sister-in-law of the Applicant turned hostile and only on that ground the order of acquittal has been passed. He submitted that this is a case where an order of remand needs to be passed.

6. The learned Counsel appearing for the Respondents Nos.2 and 4 submitted that no interference was called for in revisional jurisdiction. He submitted that even the Applicant did not come forward to lead evidence and on the basis of the deposition of her sister-in-law, the learned trial Judge has rightly observed that the Applicant was not interested in prosecuting the matter further as she was happily married since then. He submitted that since the incident is of the year 1999 in view of the decision of this Court in the case of Suraya Ibrahim Shaikh v/s. Ibrahim Rahim Shaikh and another (1996 Cri.L.J. 2415), this Court should not interfere after such a long lapse of time.

7. I have considered the submissions. A perusal of the Roznama shows that the case was fixed on 26th April 2002 for formal hearing. On that day the Court directed issuance of witness summons as per the list Exh.13. There is an endorsement in the Roznama on 3rd May 2002 showing that the witness summonses were issued. On the next date i.e. 11th June 2002, the learned trial Judge has noted in the roznama that the parties were

compromising the case. It appears that a witness list was filed on that day by the learned P.P. On the said witness list, the learned Judge directed issuance of witness summons. However, the learned trial Judge has noted in the Roznama that as orally requested by the P.P summons may not be issued. The next date was fixed as 19th June 2002. On that day deposition of P.W.1 Mrs.Bhagyashree Vilas Kerkar was recorded. As stated earlier, she did not support the prosecution and was declared hostile. On the same day pursis for closure of evidence was filed by the prosecution.

8. What is clearly reflected from the Roznama is that on 26th April 2002 the witness summonses were issued. On 11th June 2002, a witness list was filed by the learned P.P on which an order was made for issuing the witness summonses. However, an oral request of the learned P.P was recorded and it was directed that the summons may not be issued. Thus it is apparent that the witness summons to the Applicant who is the real victim of the alleged offence was not at all served. The learned trial Judge did not notice that on 11th June 2002 itself the prosecution had applied for witness summonses by submitting a list of witnesses. The learned trial Judge did not verify whether the witness summonses were served to all the material witnesses and in particular to the Applicant. In my view, there is material procedural irregularity and illegality

committed by the learned trial Judge which has caused prejudice to the Applicant. The learned Judge has not allowed evidence of the Applicant to be recorded. As there is material procedural illegality and irregularity committed by the learned trial Judge, this a case where the impugned order will have to be set aside and fresh trial will have to be ordered.

9. Reliance placed on the case of Suraya Ibrahim Shaikh (supra) will not help the Respondents No.2 and 4. In the said case the learned Single Judge of this Court declined to pass order of retrial as the parties were husband and wife and subsequently they were divorced. The learned Single Judge observed that there was no grievance made that proper opportunity was not granted to the prosecution to adduce any evidence. In the context of the factual matrix before him, the learned Single Judge of this Court came to the conclusion that it will be unjust to order retrial.

10. In the present case the offence alleged is under section 366 of the IPC and the present Applicant is the victim of the alleged offence who did not get an opportunity to step into the witness box for establishing the guilt of the Accused persons. Therefore, there is no option but to set aside the impugned order and to remand the case for fresh trial as against Respondents Nos.2 and 4.

11. Hence the following order is passed:

i) Criminal Revision Application is partly allowed.

ii) The impugned Judgment and order dated 28th June 2002 is quashed and set aside and Sessions Case No.10 of 2001 is restored.

iii) There shall be a fresh trial in Sessions Case No.10 of 2001 in accordance with the law.

iv) Writ of this order be send to the trial Curt forthwith.

Judge.